THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.26438 of 2005

Dated:01.02.2006

Between:

Kilaru Visweswara Rao, and another.

…Petitioner

And

The District Panchayat Officer, and another.

…Respondents

THE HON'BLE SRI JUSTICE V.V.S.RAO

WRIT PETITION No.26438 of 2005

ORDER:

The two petitioners, who are residents of Annapaneni Vaarigudem, Hamlet of K.Gokavaram, Lingapalem Mandal, West Godavari District, allegedly participated in the auction conducted on 24.11.2005 by the second respondent to lease out the fishing rights in Komatikunta Cheruvu and Jangamkunta Cheruvu of K.Gokavaram Village. The first petitioner became the highest bidder by quoting a sum of Rs.9,500/- per annum in respect of Komatikunta tank and the second petitioner

became the highest bidder at Rs.9,000/- per annum in respect of Jangamkunta tank. The petitioners also allege that they purchased the fish seeds and left them in the tanks. Nevertheless, the second respondent by his letter/notice, dated 01.12.2005, directed the petitioners not to leave the seeds in the tanks until further orders. Aggrieved by the same, the petitioners filed the present writ petition seeking a writ of mandamus declaring the impugned order as illegal and arbitrary.

At the stage of admission itself, the learned Assistant Government Pleader for Panchayat Raj obtained instructions. He submits that the District Panchayat Officer received complaints about the irregularities committed by the second respondent in leasing out the fish tanks. Therefore, while ordering enquiry, the petitioners were directed by the impugned order not to conduct any fishing operations. Secondly, the Divisional Panchayat Officer, Jangareddigudem, conducted enquiry and submitted a report pointing out the irregularities namely, that the Panchayat Secretary has not followed Rule 4 of the Rules issued in G.O.Ms.No.343, dated 10.04.1978, that the Extension Officer was not present when the auction was conducted, that the date of auction was not informed, and that upset price was not obtained from the Divisional Panchayat Officer, Jangareddigudem. Learned Assistant Government Pleader further submits that after receiving the report of the Divisional Panchayat Officer, a notice was issued to the Panchayat Secretary to cancel the auctions conducted for fishing rights and after obtaining explanation, the auction conducted was cancelled.

The learned Counsel for the petitioners vehemently submits that the auction was conducted by the Panchayat Secretary on 24.11.2005, and therefore, before cancelling the same, it was incumbent on the part of the first respondent to conduct enquiry in the presence of the petitioners. He placed strong reliance on the decision of this Court in **M/s. Sathi Devi Mahila Mandali v. Medical Superintendent, A.P.V.V.P. Government Area Hospital**.

It is not denied that whenever a tank is to be auctioned for the purpose of fishing, the Gram Panchayat has to offer the tank to the local Fisheries Cooperative Society. It is also not denied that before doing so, the Gram Panchayat has to obtain an approval for fixing the upset price from the Divisional Panchayat Officer, and in the event of Fisheries Cooperative Society not accepting the offer made by the Gram Panchayat, then only an auction has to be conducted. It is also not denied that an auction has to be conducted by the Gram Panchayat after giving wide publicity. In this case, no material is placed before this Court to show that any wide publicity was given and the Rules made in G.O.Ms.No.343, dated 10.04.1978, were followed which require the presence of the Extension Officer at the time of conducting the auction. In the case cited, the petitioner therein was declared as successful bidder and without there being any notice, the same was cancelled. The said decision has no application to the facts of this case. As per the relevant Rules, whenever an auction is conducted without obtaining the upset price from the Divisional Panchayat Officer, the same would be illegal. It appears, when the auction was conducted, the petitioners herein were alone present and the Panchayat Secretary merely declared them as successful bidders.

There was no publicity as required under the Rules. When the Gram Panchayat conducts auction in the manner that is conducted in this case, the same would be *ex*

facie illegal and the petitioners cannot be said to have any right, especially, when the auction was not confirmed by the appropriate competent authority.

The Writ Petition is therefore, misconceived, and is accordingly dismissed. The amounts, if any paid by the petitioners, shall be returned by the Gram panchayat immediately. No costs.

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(V.V.S.RAO, J)

01.02.2006

vs